1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

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4 TRANSPERFECT GLOBAL, INC.,   No. C 10-2590 CW
   TRANSPERFECT TRANSLATIONS INT'L,
5 INC., and TRANSLATIONS.COM, INC.,   ORDER REGARDING
                                                 CROSS-MOTIONS FOR
6   Plaintiffs,   CLAIM CONSTRUCTION
                                                 AND SUMMARY
7   v.   JUDGMENT (Docket
                                                 No. 246)
8 MOTIONPOINT CORP.,

9   Defendant.
                                            /
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11   Plaintiffs and Counterclaim-Defendants Transperfect Global,

12 Inc., Transperfect Translations International, Inc., and

13 Translations.com, Inc. (collectively, Transperfect) and Defendant

14 and Counter-Claimant MotionPoint Corporation dispute the meaning

15 of claims in four MotionPoint patents: U.S. Patent Nos. 7,584,216

16 ('216 patent), 7,627,479 ('479 patent), 7,580,960 ('960 patent),

17 and 7,627,817 ('817 patent). The parties also dispute the meaning

18 of claims in three Transperfect patents: U.S. Patent Nos.

19 7,207,005 ('005 patent), 6,526,426 ('426 patent), and 6,857,022

20 ('022 patent). Finally, the parties cross-move for summary

21 judgment of non-infringement on their respective patents. After

22 considering the parties' submissions and oral argument, the Court

23 construes the disputed terms as set forth below, denies

24 Transperfect's motion for summary judgment, and grants in part and

25 denies in part MotionPoint's cross-motion for summary judgment.

26   BACKGROUND

27   Transperfect and MotionPoint are competing language

28 translation firms whose clients include website operators seeking

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1   to offer content in multiple languages. To serve these clients,

2   both companies rely on a cloud-oriented system known as "proxy-

3   based translation," which allows a website operator to offer its

4   content in different languages without having to create a separate

5   website in each language. Using such a system, the client simply

6   maintains its website in a single language while the translation

7   firm generates, stores, and hosts a translated version of the

8   website on a proxy server. Typically, the firm does this by

9   monitoring the client's website for content changes or updates,

10 copying any new content it identifies onto the proxy server, and

11 translating that content into the desired foreign language using

12 some combination of human and machine translators. The firm then

13 makes the translated content available through a proxy website to

14 any person who seeks to access the client's website in the foreign

15 language.

16   All seven patents-in-suit disclose elements of a proxy-based

17 translation system. The parties dispute the meaning of seventeen

18 claim terms, most of which appear multiple times in these patents.

19 The terms appear in claims 1-5, 7, 9-12, 14-15, 17-20, and 22-23

20 of Transperfect's '426 patent; claims 1-2, 4-5, and 7-8 of

21 Transperfect's '005 patent; claims 1, 6, 10-12, 17, 22, and 26-28

22 of Transperfect's '022 patent; claims 1, 11, 27, and 36 of

23 MotionPoint's '216 patent; claims 1, 16, 21-22, and 32-33 of

24 MotionPoint's '479 patent; claims 1, 14-16, and 30-32 of

25 MotionPoint's '960 patent; and claims 1, 10-12, 18, 20, 23, and

26 32-34 of MotionPoint's '817 patent.

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DISCUSSION

I.   Claim Construction

    A.   Legal Standard

    The construction of a patent is a matter of law for the Court. Markman v. Westview Instruments, Inc., 517 U.S. 370, 372 (1996). "It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Accordingly, in construing disputed terms, the Court first looks to the words of the claims. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). Generally, the Court ascribes the words of a claim their ordinary and customary meaning. Id. The Federal Circuit instructs that "the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." Phillips, 415 F.3d at 1313. Other claims of the patent in question can also assist in determining the meaning of a claim term. Id. at 1314. "Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims." Id.

    The Federal Circuit also instructs that claims "must be read in view of the specification, of which they are a part." Id. at 1315 (quoting Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). The specification must contain a

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description of the invention that is clear and complete enough to enable those of ordinary skill in the art to make and use it, and thus the specification is "always highly relevant" to the Court's claim construction analysis. Vitronics, 90 F.3d at 1582. "Usually, [the specification] is dispositive; it is the single best guide to the meaning of a disputed term." Id. In some cases, the specification may reveal that the patentee has given a special definition to a claim term that differs from its ordinary meaning; in such cases, "the inventor's lexicography controls." Phillips, 415 F.3d at 1316. The specification also may reveal the patentee's intentional disclaimer or disavowal of claim scope. "In that instance as well, the inventor has dictated the correct claim scope, and the inventor's intention, as expressed in the specification, is regarded as dispositive." Id. However, claims are not limited to the preferred embodiment described in the specification. See SRI Int'l v. Matsushita Elec. Corp. of Am., 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc; plurality opinion).

     While emphasizing the importance of intrinsic evidence in claim construction, the Federal Circuit has authorized courts to rely on extrinsic evidence, which consists of "all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." Phillips, 415 F.3d at 1317 (quoting Markman, 52 F.3d at 980). While extrinsic evidence may be useful to the Court, it is less significant than intrinsic evidence in determining the legally operative meaning of claim language. Phillips, 415 F.3d at 1317-18; see also C.R. Bard, Inc. v. U.S. Surgical Corp., 388 F.3d 858, 862 (Fed. Cir. 2004). Furthermore, extrinsic evidence is unlikely

1   to lead to a reliable interpretation of claim language unless

2   considered in the context of the intrinsic evidence. Phillips,

3   415 F.3d at 1319.

4   B.   Disputed Terms of '426 and '005 Transperfect Patents

5   The parties dispute eight terms in Transperfect's '426 and

6   '005 patents. Although each of these terms appear in multiple

7   claims, the following three claims from the '426 patent suffice to

8   illustrate how these terms are used throughout the patent.[1] Six

9   of the disputed terms in appear in claim 1, which reads as

10 follows, with the disputed terms in bold:

> A process for managing, tracking, accounting and
>   translating multilingual electronic content in a
>   computer environment, comprising the steps of:
> **detecting when** a document, data stream, or non-text file
>   in a **master language** has been updated;
> notifying the **user** which corresponding documents, data
>   streams, or non-text files in the other languages
>   require translation;
> allowing the **user** to initiate the translation of a
>   document, data stream, or non-text file and its
>   constituent or dependent elements;
> converting said document, data stream, or non-text file
>   and its constituent or dependent elements requiring
>   translation to an **internal format**;
> **staging the translation** of said document, data stream,
>   or non-text file and its constituent or dependent
>   elements; and
> **dynamically routing and sequencing** said document, data
>   stream, or non-text file and its constituent or
>   dependent elements to the appropriate translation
>   resources, wherein said routing and sequencing is
>   performed according to any of: the subject matter of
>   the document to be processed, target language of the
>   translation, and whether draft-only or high quality
>   is required.

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[1] The subheadings below identify where each disputed term appears
in each patent.

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1 '426 patent col. 52:28-:53. Another disputed term, "pipeline,"

2 appears multiple times in claim 7, which states in relevant part:

3
4
> A process for managing, tracking, accounting and
>   translating multilingual electronic content in a
>   computer environment, comprising the steps of:
5
> detecting when a document, data stream, or non-text file
>   in a master language has been updated;
6
> notifying the user which corresponding documents, data
>   streams, or non-text files in the other languages
7
>   require translation;
8
> sending documents, data streams, or non-text files to be
>   translated down a **pipeline**, wherein said **pipeline** is
9
>   connected to a plurality of translation resources
>   using one or more open Application Programming
10
>   Interfaces (API);
> sending packets to translation resources through said
11
>   Adaptor, wherein work packets are converted to the
>   appropriate translation resource format before
12
>   sending said converted work packet to said
>   translation resource;
13
> receiving packets from translation resources through
14
>   said Adaptor, wherein received packets are converted
>   back to the work packet format and the status and
15
>   control information are updated in said work packet
>   before sending said converted received packet to said
16
>   **pipeline**;
> wherein said one or more open API allow a variety of
17
>   translation resources to be connected to said
18
>   **pipeline . . .**

19 Id. col. 53:45-54:7. The eighth and final disputed term in the

20 '426 patent, "a module for," appears throughout claim 9:

21
> An apparatus for managing, tracking, accounting and
>   translating multilingual electronic content in a
22
>   computer environment, comprising:
> **a module for** detecting when a document, data stream, or
23
>   non-text file in a master language has been updated;
> **a module for** notifying the user which corresponding
24
>   documents, data streams, or non-text files in the
25
>   other languages require translation;
> **a module for** allowing the user to initiate the
26
>   translation of a document, data stream, or non-text
27
>   file and its constituent or dependent elements;

28

6

> **a module for** converting said document, data stream, or
>   non-text file and its constituent or dependent
>   elements requiring translation to an internal format;
> **a module for** staging the translation of said document,
>   data stream, or non-text file and its constituent or
>   dependent elements; and
> **a module for** dynamically routing and sequencing said
>   document, data stream, or non-text file and its
>   constituent or dependent elements to the appropriate
>   translation resources, wherein said routing and
>   sequencing is performed according to any of: the
>   subject matter of the document to be processed,
>   target language of the translation, and whether
>   draft-only or high quality is required.

Id. col. 54:11-:36. The following subsections address the

construction of these eight terms.

> 1.   "Detecting when"
>   '426: 1, 5, 7, 9, 14-15, 17, 22-23;
>   '005: 1, 4, 7.

The parties dispute the meaning of the term "detecting when,"

which describes how the translation system disclosed in

Transperfect's '426 and '005 patents identifies new content on the

original-language website. This dispute essentially revolves

around whether the word "when" should be given its temporal

meaning (i.e., "at which time") or its conditional meaning (i.e.,

"if"), both of which are commonly recognized by many English

dictionaries. See, e.g., Webster's 3d New Int'l Dictionary 2062

(Philip B. Gove ed., 1993).

Transperfect contends that the term should be given its

conditional meaning. For support, it cites other uses of the term

"when" in the specification[2] and argues that, in those contexts,

the word is used "to mean 'if' and not to identify a time or

date." Docket No. 272, Transperfect Stmt. Re: Claim Constr., at

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[2] The specification for the '005 patent is identical to the
specification for the '426 patent in all relevant respects.

2.[3]   In each of the instances Transperfect cites, however, the meaning of "when" is ambiguous and the term is susceptible to either the temporal definition or the conditional definition.

MotionPoint, in contrast, relies on other language from the specification to argue that "when" must be given its narrower, temporal definition. It highlights a sentence which states that the disclosed system will "<u>immediately</u> alert the Web site manager" when new or updated content is added to the original-language version of the website. '426 patent col. 11:39-:42; '005 patent col. 11:48-:51 (emphasis added). Critically, the specification does not state that the website manager will be "immediately" alerted if new original-language content is <u>detected</u>; rather, it says that the notification will occur "[i]f a document in the master language is [] <u>updated</u>." '426 patent col. 11:37-38 (emphasis added); '005 patent col. 11:47-:48 (same). This suggests that the detection of the new content occurs "immediately," because the notification itself occurs immediately.

In light of this language in the specification, the term "detecting when" must be given its temporal meaning. <u>See</u> <u>Athletic</u> <u>Alternatives, Inc. v. Prince Mfg., Inc.</u>, 73 F.3d 1573, 1581 (Fed. Cir. 1996) ("Where there is an equal choice between a broader and a narrower meaning of a claim, and there is an enabling disclosure that indicates that the applicant is at least entitled to a claim

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[3] MotionPoint objects to Transperfect's unauthorized submission of a supplemental post-hearing brief in support of its claim construction motion. Because Transperfect's supplemental brief does not provide any new information or argument, this order does not rely on it. MotionPoint's objection is therefore overruled as moot. The Court relies only on the post-hearing submissions that it specifically requested -- namely, the parties' joint statement and Transperfect's citations to the summary judgment record.

having the narrower meaning, we consider the notice function of

the claim to be best served by adopting the narrower meaning.").

Because MotionPoint's proposed construction -- "monitoring as" --

does not clearly convey this meaning, the Court construes the

disputed term as "discovering immediately at the time that" so

that the term's temporal meaning is explicit.[4]

Transperfect requests, as an alternative, that the Court

construe the term as: "detecting at some predetermined

intermittent interval." Transperfect Stmt. Re: Claim Constr. 2.

Although this proposed construction would recognize the temporal

meaning of "when," Transperfect has not identified any support for

this particular construction in the record. Accordingly, the

Court declines to adopt this alternative.

> 2. "Master language"
> '426: 1, 5, 7, 9, 14-15, 17, 22-23;
> '005: 1, 4, 7.

The parties initially disputed the meaning of the term

"master language" but now agree that the term refers to the

original language of a website that will be translated into a

different language. At the hearing, they jointly proposed that

the term be construed as "reference language." Although the Court

accepts the parties' general explanation of this term, it

construes the term as "original language" in order to minimize the

potential for juror confusion.

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[4] Transperfect's assertion that MotionPoint did not timely disclose its proposed construction of "detecting when" is baseless. MotionPoint disclosed this proposed construction in the parties' joint claim construction statement, submitted on April 5, 2012, see Docket No. 120, at 3, and in one of MotionPoint's expert reports.

3. "User"
            '426: 1-5, 7, 9-12, 14-15, 17-20, 22, 23;
            '005: 1, 2, 4-5, 7-8.

The parties dispute the meaning of the term "user." While MotionPoint asserts that the term refers only to the manager of the original-language content or his or her agents, Transperfect contends that the term refers to any person who uses the translation system, regardless of whether that person manages the original-language content. In other words, MotionPoint contends that "user" refers exclusively to the website manager employed by the client whose website requires translation, while Transperfect contends that it may refer both to the client's employees and to employees of the translation firm itself.

The specification suggests that "user" refers only to the manager of the original-language content and not to employees of the translation firm. In describing the invention, the specification for both the '426 and '005 patents refers to the original-language website that will be translated as the "user's site." Specifically, it states, "The user is notified of the completion of translation and the invention coordinates the delivery of the translated documents, data streams, or non-text files back to the user's site for installation and review." '005 patent col. 2:33-:37; '426 patent col. 2:29-32 (emphasis added). This language negates the broader construction of the term that Transperfect proposes.

Accordingly, the Court construes "user" as "manager of the original-language content or his or her agents (e.g., the website manager)." The Court declines to adopt MotionPoint's proposed construction, "manager of the master language content (e.g.,

Website manager)," in light of the Court's construction of the term, "master language," which is discussed above.

4. "Pipeline"
'426: 7, 15, 23.

At the hearing, the Court proposed that the term "pipeline" be construed as "a list of tasks to be performed." Although Transperfect acceded to this construction at the hearing, MotionPoint objected on the grounds that it lacked sufficient specificity. However, MotionPoint failed to offer a viable alternative.

MotionPoint's proposed construction -- "a transport layer for scheduled dispatch of documents to translation resources" -- is both convoluted and overly restrictive. It not only introduces a confusing term, "transport layer," but also renders the claim's subsequent reference to "translation resources" redundant. Thus, MotionPoint's proposed construction must be rejected.

Because MotionPoint has not raised any compelling objections or an understandable alternative to the Court's proposed construction, the Court construes "pipeline" as "a list of tasks to be performed."

5. "Internal format"
'426: 1, 5, 9, 14, 17, 22.

The parties generally agree that the term "internal format," as used in the patents, refers to the way that the invention stores original-language content before it is translated. They disagree, however, about how to convey this meaning in plain language.

11

The Court construes the term as an "arrangement of digital data in a file suitable for use within the claimed system." Although Transperfect objects to the use of the word "digital," the language of patent makes clear that this is an appropriate limitation. All six of the claims that use the term, "internal format," disclose a process for "translating multilingual electronic content in a computer environment." '426 patent col. 52:30-:31, 53:14-:15, 54:12-:13, 55:7-:8, 56:4-:5, 57:2-:3 (emphasis added).

> 6.   "Staging the translation"
>   '426: 1, 5, 9, 14, 17, 22.

At the hearing, the Court proposed that the term "staging the translation" be construed as "preparing for translation." Because both parties agreed that this proposal was acceptable, the Court adopts this construction.

> 7.   "Dynamically routing and sequencing"
>   '426: 1, 5, 9, 14, 17, 22.

The parties generally agree that the term "dynamically routing and sequencing" means continually routing and sequencing original-language documents (or other types of files) in response to changing criteria. Once again, however, they disagree about how to convey this meaning in plain language.

At the hearing, the Court directed the parties to propose new language that would make clear that the disclosed translation system is capable of responding to changing criteria. MotionPoint contends that the construction must also reflect that this process occurs "in real time" because the patent's use of the word, "dynamically," suggests that this process occurs rapidly. Docket

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No. 271, Joint Stmt. Re: Claim Constr., at 4. The Court agrees

that the word, "dynamically," indicates that the claimed step

occurs "in real time." See Random House Dictionary (May 6, 2013,

11:30 a.m.), http://dictionary.reference.com/browse/dynamic

(illustrating the meaning of the word "dynamic" with the sentence:

"Dynamic Web sites contain Web pages that are generated in real

time." (emphasis added)). However, because the phrase "in real

time" would not be clear in this context, the Court construes the

disputed term as "routing and sequencing, with the capacity to re-

route and re-sequence while operating, in response to changing

criteria."

>   8.   "A module for . . ."
>   '426: 9-12, 14-15;
>   '005: 4-5.

The parties dispute whether the term "a module for . . ."

represents a means-plus-function limitation that must be construed

according to 35 U.S.C. § 112, ¶ 6. Typically, a claim term that

does not use the word "means" will trigger the rebuttable

presumption that § 112, ¶ 6 does not apply. However, this

presumption can be rebutted if "the claim term fails to 'recite

sufficiently definite structure' or else recites 'function without

reciting sufficient structure for performing that function.'" CCS

Fitness v. Brunswick Corp., 288 F.3d 1359, 1369 (Fed. Cir. 2002)

(quoting Watts v. XL Sys., Inc., 232 F.3d 877, 880 (Fed. Cir.

2000)). This "issue often reduces to whether skilled artisans,

after reading the patent, would conclude that a claim limitation

is so devoid of structure that the drafter constructively engaged

1 in means-plus-function claiming." <u>Inventio AG v. ThyssenKrupp</u>

2 <u>Elevator Americas Corp.</u>, 649 F.3d 1350, 1357 (Fed. Cir. 2011).

3   Here, the patents' claims recite function without reciting

4 any definite structure. The relevant claims do not identify any

5 specific hardware or software for performing the functions listed

6 in each claim. Instead, they refer simply to an "apparatus . . .

7 comprising: a module for" performing those functions. These

8 generic references do not recite a sufficiently definite

9 structure.

10   Although MotionPoint correctly asserts that "a module

11 for . . ." must be construed as a means-plus-function limitation,

12 its briefs do not identify a specific structure to which the term

13 should be limited. At the hearing, MotionPoint suggested that the

14 Court adopt, for each use of the term, the structure it proposed

15 for that term in the appendix to the parties' joint claim

16 construction statement. <u>See</u> Docket No. 120, Ex. A, at 37-47. The

17 Court has reviewed these proposed structures and agrees.

18 Accordingly, it construes each use of "a module for . . ." as a

19 means-plus-function limitation with the function and structure

20 proposed for each use by MotionPoint in the joint claim

21 construction statement.

22   C.   Disputed Terms of '022 Transperfect Patent

23   At the hearing, the parties disputed two terms in

24 Transperfect's '022 patent. The first disputed term, "obtaining a

25 translation," appears once in claim 1 and twice in claim 17. The

26 following excerpt offers an example of how the term is used:

27   A single-action translation ordering system comprising:
           a single action translation component displayed
28   simultaneously with at least part of an electronic

14

communication comprising at least text of more than
one word and one or more hyperlinks to further
electronic communications, said translation component
comprising an object identified as effecting a
translation of said electronic communication in a
single action;
a communication network; and
a translation manager in communication with said single
action translation component via said communication
network;
said translation manager:
obtaining a translation of said electronic
communication in response to a user clicking said
single action translation component;
directing transmission of said translation of said
electronic communication to said user; and
providing translation of said further electronic
communications when said hyperlink is activated;
by delivering a translation of said further
electronic communications that was translated when
said electronic communication was translated; or
by **obtaining a translation** of said further electronic
communications when said hyperlink is activated.

'022 patent col 8:51-9:10. The other disputed term in the '022

patent appears only once, in claim 22:

The system of claim 17 wherein said translation
manager includes **means for effecting automatic
translation of said communication.**

Id. col. 10:31-:33.

Prior to the hearing in this matter, the parties reached an

agreement to construe the term "effecting a translation," which

occurs in claims 1 and 17, as "bringing about a translation."

They also agreed that the term "translation manager," which they

previously disputed, does not require construction.

1.   "Obtaining a translation"
'022: 1, 17

The parties dispute the meaning of the term "obtaining a

translation." Both parties agree that the term refers to the

translation system's process for translating new content from an

original language into a different language. They disagree,

however, about whether the term also refers to the process of

15

retrieving previously translated content that was rendered in response to a prior translation request. MotionPoint contends that all content must be translated anew, including content that has already been translated, while Transperfect asserts that the invention is capable of recognizing and recalling content that has already been translated.

The specification contemplates at least one preferred embodiment of the system that can retrieve previously translated content without re-translating it. The specification explains that this feature would make the system more efficient. To illustrate this point, it highlights the example of a news website with "static heading content but dynamic news content." '022 patent col. 3:23-:25. The patent notes that, using one embodiment of the translation system, "the static content can be translated once and cached whereas the dynamic content must be translated each time a translation is requested." Id. MotionPoint's narrow construction of "obtaining a translation" would exclude this preferred embodiment and must therefore be rejected. See SEB S.A. v. Montgomery Ward & Co., Inc., 594 F.3d 1360, 1369 (Fed. Cir. 2010). While MotionPoint highlights another preferred embodiment of the invention that could make "recommendations on which pages should be permanently translated and into which languages," this does not necessarily preclude embodiments of the system that would perform permanent translations of certain pages automatically so as to avoid repeated translations of the same content. What's more, as noted above, the preferred embodiment of an invention should not be used to impose limitations on disputed claim terms. See SRI Int'l, 775 F.2d at 1121.

1   Accordingly, the Court construes the term "obtaining a

2 translation" as "bringing about a new or retrieving an existing

3 translation."

4   2.   "Means for effecting automatic translation of said
                     communication"
5   '022: 22

6   Although the parties initially disputed this term, they have

7 since reached an agreement to construe the term as a means-plus-

8 function limitation with the following function and structure:

9   Function: effecting automatic translation of said
       communication.
10

11   Structure: translation engines or software programs;
       translation sites with translation engines or software
12   programs.

   The Court finds the parties' joint proposal reasonable and
13

14 therefore adopts their proposed construction.

15   D.   Disputed Terms of '216, '479, '817, and '960 MotionPoint
                  Patents

16   The parties dispute the meaning of seven claim terms that

17 appear in MotionPoint's four patents. The following four

18 claims -- one from the '216 patent, two from the '479 patent, and

19 one from the '960 patent -- illustrate how these disputed terms

20 are used throughout MotionPoint's patents.

21   The first disputed claim term, "human translation," appears

22 throughout MotionPoint's '216, '960, and '479 patents. Claim 1 of

23 the '479 patent offers an example of how the term is used:

24   A machine implemented method for managing language
          translation, comprising the steps of:
25   crawling an origin web site hosting content in a first
          language via following publicly accessible links to
26   additional pages;
       identifying a portion of the content in the first
27   language that is not yet translated to the second
          language; . . .
28

17

translating the translatable components into a second
    language using **human translation**; . . .

'479 patent col. 32:31-:50.

Claim 1 of the '216 patent exemplifies three more disputed
terms:

A machine implemented method for providing translated
web content, comprising the steps of:
receiving a first request from a user for content in a
    second language translated from content in a first
    language from a first Internet source;
retrieving the content in the first language from the
    first Internet source;
dividing the content in the first language into a
    plurality of translatable components, wherein a
    translatable component includes a **segment of text**;
determining whether there are translatable components
    for which no corresponding translation is found in a
    database that stores translations for translatable
    components generated previously;
scheduling for translation of translatable components
    that do not have corresponding translations in the
    database and using a human translator to translate
    each translatable component into the second language,
    wherein each segment of text is translated as a unit;
storing into the database the translations of the
    translatable components as translatable components;
receiving a second request from a user for the
    translated content in the second language
    corresponding to the content in the first language
    from the first Internet source;
retrieving the content in the first language from the
    first Internet source;
dividing the received content in the first language into
    a plurality of translatable components;
generating the translated content in the second language
    by modifying the received content in the first
    language so that each translatable component is
    replaced with a corresponding translated component
    stored in the database; and
sending the translated content to the user as a response
    to the second request.

'216 patent col. 32:51-33:19.

Claim 30 of the '479 patent provides another disputed term:

A machine implemented method for managing language
translation, comprising the steps of: **scheduling content
in a first language for translation by storing content**
in the first language accessed via following publicly
accessible links from a web server that hosts the
content in the first language . . . .

18

1   '479 patent col. 35:55-:60.

2   And claim 1 of the '960 patent discloses the final disputed

3   term:

4   A machine implemented method for **synchronizing** content
        in different languages, comprising the steps of:
5   accessing from a web server via a publicly available
        network path, content in a first language, including
6   content retrieved by crawling a website . . . .

7   '960 patent col. 32:36-:41.

8   1.   "Human translation"
                         '960: 4, 19, 35
9   '479: 1, 16, 21, 30
                         '216: 20
10

11   MotionPoint's '216, '960, and '479 patents all feature claims

    that use the term "human translation." Transperfect contends that
12
    this term is indefinite because MotionPoint's patents disclose a
13
    machine-based translation system and, thus, the patents' claims
14
    should be "limited to steps or functions performed without human
15
    intervention." Transperfect Mot. Claim Constr. & Summ. J. 14.
16
        This argument ignores the plain language of the patent
17
    specifications. Each of MotionPoint's patents expressly
18
    contemplates human involvement at the translation stage. Indeed,
19
    the specifications make clear that one of the principal benefits
20
    of proxy-based translation systems over machine-only translation
21
    systems is the ability to obtain more readable translations by
22
    using human translators. The '216 patent states, "The present
23
    invention is further advantageous because it allows for the use of
24
    human translation, thereby producing a high quality translation of
25
    the original web site in another language. This is beneficial as
26
    it reduces or avoids the use of machine translation, which can be
27
    of low quality." '216 patent col. 4:1-:5. The '960 and '479
28

                                   19

patents similarly recognize that human translation could be used
to complement machine translation within the disclosed translation
systems.   '479 patent col. 21:16-:19 ("The translation server 400
can use real-time machine translation in the event that a human
translation is not yet available for a text segment."); '960
patent col. 21:23-:25 (same).   Thus, while MotionPoint's patents
rely exclusively on computers at other stages of the process --
for instance, in retrieving data from an original-language website
or dividing that data into text and image files -- they expressly
acknowledge that humans may play a role at the language
translation stage.   In short, ample intrinsic evidence shows that
the term, "human translation," is not indefinite.   The Court
therefore construes the term according to its plain and ordinary
meaning, namely, as "translation performed by a human."

> 2.   "Segment of text"
>   '216: 1, 27, 36

Transperfect argues that the term "segment of text" should be
construed as a "chunk of text on the page as defined by the HTML
that surrounds it."   It bases its proposed construction on the
'216 patent specification, which states, "A text segment is a
chunk of text on the page as defined by the HTML that surrounds
it."   '216 patent col. 11:60-:62.   MotionPoint contends that this
language does not control and that Transperfect's proposed
construction -- particularly the reference to HTML -- is unduly
narrow.

Because the specification provides a clear definition of the
disputed term, the "inventor's lexicography controls."   Phillips,
415 F.3d at 1316.   MotionPoint's reliance on extrinsic evidence to

1   define the term more broadly is unavailing as is its contention

2   that someone of ordinary skill in the art would understand

3   "segment of text" to mean something other than the definition

4   provided in the specification. The Federal Circuit has

5   specifically held that the specification's definition is

6   dispositive even when it "reveal[s] a special definition given to

7   a claim term by the patentee that differs from the meaning it

8   would otherwise possess." Id. Contrary to MotionPoint's

9   assertion at the hearing, an inventor is not required to provide

10 "a statement in the form of 'I define _____ to mean _____'" in

11 order to define or re-define a specific term in the patent.

12 Astrazeneca AB v. Mutual Pharm. Co., 384 F.3d 1333, 1339 (Fed.

13 Cir. 2004) (holding that "such rigid formalism is not required");

14 see also Bell Atl. Network Servs., Inc. v. Covad Communications

15 Group, Inc., 262 F.3d 1258, 1268 (Fed. Cir. 2001) ("[A] claim term

16 may be clearly redefined without an explicit statement of

17 redefinition.").

18   Other references to "text segments" in the patent also

19 indicate that HTML constitutes part of the term's definition. For

20 instance, the patent states that the "parsing system is flexible

21 and allows defining, on per-customer basis, which HTML tags are

22 formatting tags that should not break up text segments." '216

23 patent col. 12:22-:23 (emphasis added); see also '216 patent col.

24 12:18-:19 ("By default, the parsing system breaks-up text segments

25 according to the HTML tags in the page."). These repeated

26 references to the "HTML tags" of "text segments" further support

27 the inventor's definition of the term.

28

1   MotionPoint's contention that the doctrine of claim

2   differentiation requires a broader construction of the term is

3   unavailing. The Federal Circuit has expressly held that "the

4   doctrine of claim differentiation does not allow unrestrained

5   expansion of claims beyond the description of the invention in the

6   specification." Tandon Corp. v. United States ITC, 831 F.2d 1017,

7   1024, 1028 (Fed. Cir. 1987). The court has repeatedly recognized

8   that the "doctrine of claim differentiation creates only a

9   presumption, which can be overcome by strong contrary evidence

10 such as definitional language in the patent." InterDigital

11 Communications, LLC v. Int'l Trade Comm'n, 690 F.3d 1318, 1324

12 (Fed. Cir. 2012); see also Black & Decker, Inc. v. Robert Bosch

13 Tool Corp., 260 Fed. App'x 284, 290 (Fed. Cir. 2008) (rejecting

14 the district court's reliance on the doctrine of claim

15 differentiation because "the presumption of scope applied to the

16 independent claims under the doctrine of claim differentiation

17 here does not overcome the definition from the intrinsic record").

18 In the present case, the '216 patent's clear definition of

19 "segment of text" rebuts any presumption created by the doctrine

20 of claim differentiation.[5]

21

22

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23   [5] It is not clear that the doctrine of claim differentiation even
    supports a broader construction of the disputed term here. The
24 dependent claim that MotionPoint cites -- claim 11 -- does not use the
    term "segment of text" at all but, rather, uses the broader term,
25 "translatable components," when discussing non-HTML "markup tag[s]."
    '216 patent col. 33:57-:59. Because another claim in the patent --
26 claim 8 -- makes clear that the term "translatable components"
    encompasses not only "text segment[s]" but also "image file[s]," "audio
27 clip[s]," and "video clip[s]," id. 33:40-:47, claim 11 cannot be read to
    eliminate the HTML-based limitation from the patent's definition of
28 "segment of text."

Accordingly, the Court construes "segment of text" as "a chunk of text on the page as defined by the HTML that surrounds it."

       3.   "Dividing," "Parsing," and "Parsed"
            '960: 1, 14, 15, 16, 30, 31, 32;
            '216: 1, 11, 24, 27, 36;
            '817: 1, 10-12, 18, 20, 23, 32-34

Transperfect contends that the terms "dividing," "parsing," and "parsed" should all be construed as "breaking-up the content into translatable components according to HTML tags surrounding each translatable component." Once again, Transperfect bases its proposed construction on the patent specifications, which state, "Parsing is the process of breaking-up an HTML page submitted for translation into its translatable and non-translatable components." '216 patent col. 11:46-48; '960 patent col. 11:51-:53; '817 patent col. 11:51-:53. MotionPoint argues that this language does not control and that Transperfect's proposed construction is too narrow. Specifically, MotionPoint argues that "dividing," "parsing," and "parsed" should not be construed to apply only to "HTML page[s]" because such a construction would

_____

Another dependent claim -- claim 26, which MotionPoint fails to cite -- provides a slightly stronger basis for invoking the doctrine of claim differentiation; however, it still does not justify eliminating the HTML-based limitation from the definition of "segment of text." Claim 26 reads: "The method according to claim 1, wherein the plurality of translatable components include a text segment enclosed in an attribute of an HTML tag." Id. 34:59-:61. The specification makes clear that an "attribute of an HTML tag" is merely a specific kind of HTML tag. Thus, this claim -- the only claim in the entire '216 patent that even mentions HTML -- does not preclude the Court from including any HTML-based limitations in its construction of "text segment"; it simply precludes the Court from including a specific kind of HTML-based limitation (namely, an "attribute of an HTML tag") in its construction of "text segment." Accordingly, claim 26 does not require a broader construction of "segment of text" (or "text segment") under the doctrine of claim differentiation.

1   undermine the patents' statement that the "parsing system is

2   flexible." '216 patent col. 12:22-:23; '960 patent col. 12:25-

3   :27; patent col. 12:27-:29.

4   While MotionPoint is correct that the specifications

5   contemplate some flexibility in the parsing system, this

6   flexibility does not preclude Transperfect's proposed

7   construction. If anything, the sentence on which MotionPoint

8   relies appears to confirm that the patent uses the terms

9   "dividing," "parsing," and "parsed" to describe the division of

10 content based on HTML tags. The full sentence reads: "The parsing

11 system is flexible and allows defining, on per-customer basis,

12 which HTML tags are formatting tags that should not break up text

13 segments." '216 patent col. 12:22-:23; '960 patent col. 12:25-

14 :27; patent col. 12:27-:29 (emphasis added). Thus, the parsing

15 system's flexibility does not undermine Transperfect's proposed

16 construction.

17   MotionPoint next argues that Transperfect's proposed

18 construction is precluded by the doctrine of claim

19 differentiation. Once again, however, this argument fails because

20 it would require an "expansion of claims beyond the description of

21 the invention in the specification." Tandon Corp., 831 F.2d at

22 1028. The patents' express definition of "parsing" renders the

23 doctrine of claim differentiation inapplicable here.

24 InterDigital, 690 F.3d at 1324. Furthermore, even if the doctrine

25 did apply, it would not preclude the Court from including "HTML

26 tags" within its construction of the terms "parsing" and

27 "dividing." The dependent claims in the '817 or '960 patents do

28 not even mention HTML and, thus, cannot reasonably be read to

eliminate the term from the definition of "parsing" or dividing"
in the independent claims.

The Court therefore adopts the inventor's own lexicography
and construes the terms "dividing," "parsing," and "parsed" as
"breaking-up the content according to HTML tags."

4.   "Synchronizing" and "Synchronized"
'960: 1, 16, 32

Transperfect contends that the terms "synchronizing" and
"synchronized" should be construed as "modified/modifying to make
the same as." MotionPoint contends that this proposed
construction does not accurately capture the meaning of
"synchronized" as the term is used in claim 1 of the '960 patent.
That claim describes how "updated content in the second language
is synchronized with the accessed content in the first language."
'960 patent col. 32:60-:61. MotionPoint notes that, under the
disclosed translation process, some of the "updated content in the
second language" may have already been modified to match content
in the first language and, in that situation, would not need to be
modified again.

To accommodate this situation that MotionPoint highlights,
the Court adopts an amended version of Transperfect's proposed
construction. Rather than construing the terms "synchronizing"
and "synchronized" as "modified/modifying to make the same as,"
the Court construes the terms as "modified/modifying, if
necessary, to make the same as." Transperfect agreed at the
hearing that it found this amendment acceptable.

5.   "Scheduling"
          '216: 1, 27, 36;
          '479: 1, 16, 21-22, 32-33

Both the '216 and '479 patents use the term "scheduling" to describe how certain original-language content is placed in a queue for translation. The parties dispute whether this content, under the disclosed translation inventions, must be translated in the same order in which it appears in the queue. MotionPoint asserts that the content need not be translated in any specific order; Transperfect, in contrast, argues that the content must be translated in the same sequence in which it appears in the queue. Transperfect also contends that the disclosed inventions must identify the exact dates and times when every item in the queue will ultimately be translated.

MotionPoint's proposed construction ignores the plain and ordinary meaning of the word "schedule," which typically refers to a sequential order of events. See, e.g., Random House Dictionary (May 6, 2013, 2:20 p.m.), http://dictionary.reference.com/browse/ schedule?s=t (defining "schedule" as "a plan of procedure, usually written, for a proposed objective, especially with reference to the sequence of and time allotted for each item or operation necessary to its completion" (emphasis added)). Because MotionPoint does not provide any compelling reasons to deviate from this traditional definition, its proposed construction must be rejected.

So, too, must Transperfect's proposed construction. Although Transperfect at least recognizes that "scheduling" includes a sequential component, its proposed construction is overly restrictive. It would require that the claimed inventions

26

identify precise dates and times when every item in the queue will

be translated even though nothing in the patents supports such a

narrow construction of the term "scheduling." Transperfect's

reliance on the patent specifications is unavailing. While the

specifications describe how a web crawling program can be used to

check an original-language website for updates at specific times

of day, they do not suggest that content stored on the queue is

subsequently scheduled for translation at specific dates and

times. What's more, even if the description of the web crawling

schedule did apply to the translation schedule, it cannot be read

as a claim limitation because the specification makes clear that

this description is merely illustrative. The specification

states, "For <u>example</u>, if the ABC Widgets web site modifies its

sale offerings twice a week, such as on Mondays and Fridays at 12

AM, then the spider agent 404 <u>can</u> be scheduled to crawl the

relevant parts of the site shortly after (e.g., at 12:30 AM) on

those days." '216 patent col. 28:50-:55; '479 patent col. 28:30-

:35 (emphases added). This isolated illustration of the web

crawling stage does not support Transperfect's narrow construction

of claims describing an entirely different stage of the process.

Thus, in light of both the specifications and the plain

meaning of the term, the Court construes "scheduling" as "placing

onto a list for translation in a specified sequence."

> 6.   "Scheduling content in a first language by storing
>   content"
>   '479: 30-32

Transperfect argues that this term is indefinite because the

words "scheduling" and "storing," as used in the patent,

27

effectively mean the same thing: that is, placing original-language content in a queue for subsequent translation.

This argument is unpersuasive because "scheduling" and "storing" have different meanings in the context of the disputed claim. As noted above, "scheduling" refers to the process of "placing [content] onto a list for translation in a specified sequence." The word "storing," in contrast, refers to the specific location of that list: in this case, the translation queue. Transperfect's effort to conflate these two definitions is insufficient to render the disputed claim term indefinite. As the Federal Circuit has held, claims should only be deemed indefinite if they are "insolubly ambiguous." Exxon Research & Engineering Co. v. United States, 265 F.3d 1371, 1375 (Fed. Cir. 2001).

Thus, based on the term's plain and ordinary meaning in the context of the '479 patent, the Court construes "scheduling content in a first language by storing content" as "scheduling content in a first language for translation by storing that content in a translation queue."

> 7.   "Retrieving the content in the first language from the first Internet source"
> '216: 1, 27, 36

The term, "retrieving the content in the first language from the first Internet source," describes one of a series of steps, which are listed in each of the claims where the term appears. The parties initially disputed whether these steps, in the disclosed invention, must be performed in the order in which they are listed in the patent. They have since resolved this dispute, however, by agreeing that certain steps must be performed in the order in which they are listed. Specifically, the parties now

1   agree that the step of "receiving a first request from a

2   user . . ." and the following step of "retrieving the content in

3   the first language . . ." must precede the step of "receiving a

4   second request from a user . . ." and the following step of

5   "retrieving the content in the first language."   The Court adopts

6   this construction in light of the parties' agreement.

7   II.   Summary Judgment

8   A.   Legal Standard

9   Summary judgment is properly granted when no genuine and

10 disputed issues of material fact remain, and when, viewing the

11 evidence most favorably to the non-moving party, the movant is

12 clearly entitled to prevail as a matter of law. Fed. R. Civ.

13 P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);

14 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.

15 1987).

16   The moving party bears the burden of showing that there is no

17 material factual dispute. Therefore, the court must regard as

18 true the opposing party's evidence, if supported by affidavits or

19 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,

20 815 F.2d at 1289. The court must draw all reasonable inferences

21 in favor of the party against whom summary judgment is sought.

22 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,

23 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952

24 F.2d 1551, 1558 (9th Cir. 1991).

25   Material facts which would preclude entry of summary judgment

26 are those which, under applicable substantive law, may affect the

27 outcome of the case. The substantive law will identify which

28 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 248 (1986). Where the moving party does not bear the burden

of proof on an issue at trial, the moving party may discharge its

burden of production by either of two methods:

> The moving party may produce evidence negating an
> essential element of the nonmoving party's case, or,
> after suitable discovery, the moving party may show that
> the nonmoving party does not have enough evidence of an
> essential element of its claim or defense to carry its
> ultimate burden of persuasion at trial.

Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d

1099, 1106 (9th Cir. 2000).

        If the moving party discharges its burden by showing an

absence of evidence to support an essential element of a claim or

defense, it is not required to produce evidence showing the

absence of a material fact on such issues, or to support its

motion with evidence negating the non-moving party's claim. Id.;

see also Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990);

Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If

the moving party shows an absence of evidence to support the non-

moving party's case, the burden then shifts to the non-moving

party to produce "specific evidence, through affidavits or

admissible discovery material, to show that the dispute exists."

Bhan, 929 F.2d at 1409.

        If the moving party discharges its burden by negating an

essential element of the non-moving party's claim or defense, it

must produce affirmative evidence of such negation. Nissan, 210

F.3d at 1105. If the moving party produces such evidence, the

burden then shifts to the non-moving party to produce specific

evidence to show that a dispute of material fact exists. Id.

1   If the moving party does not meet its initial burden of

2   production by either method, the non-moving party is under no

3   obligation to offer any evidence in support of its opposition.

4   Id. This is true even though the non-moving party bears the

5   ultimate burden of persuasion at trial. Id. at 1107.

6   B.   Transperfect's Motion for Summary Judgment

7   Transperfect moves for summary judgment that it has not

8   infringed MotionPoint's patents. It argues that, because human

9   engineers play a vital role at the "parsing" stage of its

10   translation process (i.e., when the website content is divided

11   into translatable components), it cannot have infringed the

12   MotionPoint patents, which disclose a fully automated, machine-

13   based parsing process.

14   To support this assertion, Transperfect submits statements

15   from MotionPoint's expert, Dr. Chase, whose invalidity report

16   describes how MotionPoint's parsing process is fully automated and

17   does not typically require human involvement. See Lee Decl., Ex.

18   14, at ¶¶ 39-42. Transperfect also cites statements from its own

19   expert, Dr. Paul Clark, and one of its developers, Joseph Kuefler,

20   describing how Transperfect relies heavily on human engineers to

21   parse its clients' web content into translatable components. See

22   Lee Decl., Ex. 15, at ¶¶ 63, 200; Ex. 16, Kuefler Dep. 257:14-:22.

23   MotionPoint disputes Transperfect's characterization of its

24   parsing process and asserts that much of Transperfect's parsing

25   process is actually performed by web crawling software. For

26   support, it points to statements made by Kuefler, who, during his

27   deposition, expressly stated that the dividing process was done by

28   "[s]oftware, for the most part." Declaration of Gregory C.

1   Wyckoff, Ex. 5, 78:14-79:1. MotionPoint also cites excerpts from

2   Dr. Chase's expert report in which he explains how some of the

3   human engineers who participate in Transperfect's parsing process

4   are actually tasked with improving the automated elements of that

5   process -- not with parsing the content themselves. See Wyckoff

6   Decl., Ex. 2, Chase Dep. 311:2-312:13.

7   Thus, MotionPoint has produced sufficient evidence to create

8   a genuine dispute of fact as to whether Transperfect's parsing

9   process involves significant automated elements that infringe

10 MotionPoint's patents. Transperfect's summary judgment motion

11 must therefore be denied.

12   C.   MotionPoint's Cross-Motion for Summary Judgment

13   MotionPoint cross-moves for summary judgment that it has not

14 infringed Transperfect's patents. It contends that its

15 translation system lacks key features of the translation

16 inventions disclosed in Transperfect's patents and, thus, does not

17 infringe those patents.

18   1.   '426 and '005 Patents

19   Transperfect alleges that MotionPoint's translation system

20 infringes the '426 and '005 patents by intermittently crawling its

21 clients' websites to check for changes in original-language

22 content. MotionPoint does not dispute this characterization of

23 its crawling system but, rather, argues that the system does not

24 infringe because it differs in at least one respect from the

25 crawling system disclosed by Transperfect's patents.

26 Specifically, MotionPoint notes that Transperfect's patents

27 disclose a system that monitors its users' original-language

28 content constantly and detects changes in that content

1   immediately. In contrast, MotionPoint's own system only crawls

2   its clients sites and detects content changes intermittently.

3   Although Transperfect contends that its '426 and '005 patents

4   disclose a system that monitors original-content intermittently,

5   the Court specifically rejected this argument in construing the

6   relevant patent terms. Accordingly, Transperfect's evidence does

7   not support an inference of infringement based on MotionPoint's

8   crawling system.

9   Nor has Transperfect produced sufficient evidence to support

10 a claim of infringement based on MotionPoint's system of notifying

11 its clients about the status of their translation requests. As

12 noted above, the translation system disclosed by Transperfect's

13 patents notifies the user -- that is, the manager of the original-

14 language website -- when certain original-language content

15 requires translation. See '426 patent col. 52:34; '005 patent

16 col. 53:43. Although Transperfect asserts that MotionPoint's

17 translation system provides its clients with similar

18 notifications, the evidentiary record suggests otherwise.

19 MotionPoint's expert, Dr. Paul Clark, asserts that MotionPoint's

20 translation system does not notify MotionPoint's clients when

21 content requires translation but, instead, only notifies

22 MotionPoint's own employees and subcontractors. See Wyckoff

23 Decl., Ex. 9, at ¶ 53. Although Transperfect has highlighted

24 another section of Dr. Clark's report stating that MotionPoint's

25 clients have access to the translation system, this is not the

26 same as automatic notice because it requires clients to check for

27 themselves whether any content requires translation. Thus,

28

33

1 MotionPoint's notification system does not infringe Transperfect's

2 patents.

3   Because Transperfect has failed to produce sufficient

4 evidence to support an inference of infringement, MotionPoint is

5 entitled to summary judgment of non-infringement of the '426 and

6 '005 patents.

7   2.   '022 Patent

8   Transperfect alleges that MotionPoint infringes its '022

9 patent by providing a single-action translation option on its

10 clients' websites. For support, it provides several images of

11 English-language websites maintained by MotionPoint's clients.

12 Wyckoff Decl., Ex. 11. Each of these websites features links to

13 non-English versions of these websites, images of which

14 Transperfect has also provided. Id. Transperfect has also

15 submitted internal MotionPoint documents that describe how website

16 visitors are able to click on a link on a client's website in

17 order to obtain a translation of that webpage. Eisenberg Decl.,

18 Ex. 7, TransMotion Web Site Language Layering Technology:

19 Integration Guide, at 8-9. Taken together, these documents are

20 sufficient to support a claim of infringement. Although

21 MotionPoint argues that these documents do not demonstrate that it

22 actually infringes the '022 patent, they are still sufficient to

23 raise material dispute of fact. Accordingly, MotionPoint's motion

24 for summary judgment of non-infringement must be denied with

25 respect to the '022 patent.

26   CONCLUSION

27   For the reasons set forth above, the Court construes the

28 disputed claim language in the manner explained; DENIES

                              34

1 Transperfect's motion for summary judgment of non-infringement

2 (Docket No. 246); and GRANTS in part and DENIES in part

3 MotionPoint's cross-motion for summary judgment of non-

4 infringement (Docket No. 251). The parties are directed to meet

5 with a private mediator within twenty-one days of this order.

6   IT IS SO ORDERED.

7

8 Dated: May 24, 2013   _____
                                       CLAUDIA WILKEN
9   United States District Judge

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United States District Court
For the Northern District of California

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